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PATENT
Customer No. 22,852
Attorney Docket No. 08806.0010-00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
)
NIEMI, Sami) Group Art Unit: 2676
)
Application No.: 09/853,602) Examiner: G. CUNNINGHAM
)
Filed: May 14, 2001) Confirmation No.: 6715
)
For: METHOD FOR ZOOMING)
)

P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

APPLICATION FOR PATENT TERM ADJUSTMENT—PRE-GRANT

In accordance with 37 C.F.R. § 1.705(b), Applicant hereby applies for patent term adjustment under 35 U.S.C. § 154(b) of 447 days. This application is being filed before the issue fee payment, as required by 37 C.F.R. § 1.705(b).

I. Statement of the Facts Involved

A. Correct Patent Term Adjustment

Applicant received the Determination of Patent Term Adjustment with the Notice of Allowance and Fee(s) Due mailed from the U.S. Patent and Trademark Office (PTO) on June 6, 2005. That communication indicated that this application is entitled to 447 days of patent term adjustment.

Applicant has calculated a patent term adjustment of 399 days based on the

following facts:

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Applicant filed a reply to the Office Action mailed on June 12, 2003 on September 12, 2003. The PTO replied with a subsequent Office Action that was mailed on December 19, 2003. However, the PTO records appear to indicate that this later Office Action was mailed on April 1, 2004, instead of December 19, 2003. Accordingly, the PTO's patent term calculation included an additional 80 days.

Further, in response to the Final Office Action mailed on June 2, 2004, Applicant replied in a timely manner with a reply dated September 2, 2004. Subsequently, having not heard back from the PTO, Applicant filed a Notice of Appeal with a one-month extension of time on October 4, 2004. The PTO records seem to indicate a reduction in the patent term adjustment calculation by 32 days because of Applicant's filing of a Notice of Appeal with a one-month extension of time. Applicant respectfully submits that this is improper. C.F.R. § 1.704 states:

applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any . . . Office making any rejection . . . measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection.

Applicant respectfully submits that Applicant responded to the Final Office Action within three months and, therefore, any reduction in Patent Term Adjustment is improper.

i. Relevant Dates

The above-identified application was filed May 14, 2001.

The first Office action was mailed on June 12, 2003

A response by applicant was filed September 12, 2003.

A second Office action was mailed December 19, 2003, but PTO records show the second Office Action was mailed on April 1, 2004, resulting in the addition of 80 days.

A Final Office was mailed on June 2, 2004.

A response by applicant was filed September 2, 2004.

A Notice of Appeal with a one-month extension of time was filed on October 4, 2004, resulting in the reduction of the patent term adjustment of 32 days even though Applicant responded to the Final Office Action within three months.

Thus, the total PTO adjustments based on delay is 399 days and the reductions in term adjustment is 0 days, resulting in a patent term adjustment of 399 days total. Applicant respectfully requests that the current patent term adjustment be reconsidered.

B. Terminal Disclaimer

The above-identified application is not subject to a Terminal Disclaimer.

C. Reasonable Efforts

There were no circumstances constituting a failure to engage in reasonable efforts to conclude processing of examination of the above-identified application, as set forth in 37 C.F.R. § 1.704.

II. Fee

As required by 37 C.F.R. § 1.705(b)(1), this application is accompanied by a check for \$200.00 to cover the required fee. Please charge any deficiencies to our Deposit Account No. 06-0916. If there are any other fees due in connection with the filing of this request, please charge them to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: August 4, 2005

By: 

Milan S. Kapadia
Reg. No. 55, 982

The PTO did not receive the following
listed item(s) A check for \$ 200.